BEFORE THE

U.S. DEPARTMENT OF TRANSPORTATION

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

DOCKET NO. NHTSA –2001-8677

PETITION FOR RECONSIDERATION

BY: RUBBER MANUFACTURERS ASSOCIATION
Donald B. Shea
President and Chief Executive Officer
1400 K Street, Suite 900
Washington, D.C. 20005
(202) 682-4800

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Pursuant to 49 C.F.R. §553.35, the Rubber Manufacturers Association on behalf of its tire manufacturing member companies [1], petitions for reconsideration of the National Highway Traffic Safety Administration's ("NHTSA's") final rule implementing the early warning reporting provisions of the Transportation Recall Enhancement, Accountability, and Documentation ("TREAD") Act. *67 Federal Register* 45822-45883 (July 10, 2002).

I. INTRODUCTION

While NHTSA has accepted many of RMA's proposed recommendations for implementing an early warning reporting system for tires, there are several provisions in the final rule that should be revised to ensure that tire manufacturers are not required to submit irrelevant, inaccurate or incomplete data to the agency. In particular, RMA is concerned that the final rule will require tire manufacturers to submit essentially meaningless information about property damage claims since NHTSA has failed to require the tire identification number ("TIN") to accompany such claims. In addition, the final rule contains provisions that will impose tremendous cost and other burdens on tire manufacturers without improving tire safety or providing other benefits that justify these costs. Finally, we have identified several apparent errors in the final rule that should be revised to clarify tire manufacturers' early warning reporting obligations.

Unless these provisions are revised in accordance with RMA's recommendations, compliance with the final rule will be "impracticable,

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[1] The Rubber Manufacturers Association ("RMA") is the leading national trade association representing the interests of tire and rubber manufacturers in the United States. RMA's membership includes all of the country's major tire manufacturers: Bridgestone/Firestone Americas Holding, L.L.C.; Continental Tire N.A., Inc.; Cooper Tire & Rubber Company; The Goodyear Tire & Rubber Company; Michelin North America, Inc.; Pirelli Tire North America; and, Yokohama Tire Corporation.

unreasonable, and not in the public interest." 49 C.F.R. §553.35(a). Below, we identify the specific reporting, definitional and other provisions of the rule that should be reconsidered and revised to ensure that the early warning reporting system for tires fulfills the purpose of the TREAD Act and enhances NHTSA's mission to improve highway safety.

II. THE FINAL EARLY WARNING REPORTING RULES REQUIRE THE REPORTING OF IRRELEVANT, INACCURATE OR INCOMPLETE TIRE DATA.

In enacting the TREAD Act, Congress made clear that the purpose of the early warning reporting system is to provide the agency with sufficient information on motor vehicle and equipment performance to enhance the agency's mission to promote highway safety. To ensure the integrity of this system, NHTSA should make every effort to require only the reporting of information that is accurate, complete, and relevant to this mission. The final rule for tire manufacturers fails to meet these criteria in three instances:

A. "Minimal specificity" for property damage claims.

In the NPRM, NHTSA proposed to define the term "minimal specificity" to mean "for a tire, the manufacturer, tire model, and tire size." In response to this proposal, RMA urged NHTSA to require one additional piece of information to ensure the accuracy of property damage claim data reported to the agency – the tire identification number or "TIN." The final rule, however, does not adopt this recommendation and retains the definition of "minimal specificity" proposed in the NPRM. 579.4 (c); 67 *Fed. Reg*. at 45875, col. 2.

We urge NHTSA to reconsider this issue and require the inclusion of the TIN information for purposes of satisfying the "minimal specificity" necessary to trigger a tire manufacturer's obligation to report property damage claims. *See* 579.28(d); 67 Fed. Reg. at 45882, col. 3. As we explained in earlier comments, RMA strongly believes that property damage claims should only be reported after the manufacturer has verified two pieces of information concerning a tire: (1) that it was, in fact, the manufacturer of the tire; and (2) the identity of the tire, including size, tire line, and the TIN. Moreover, without the TIN, manufacturers will be unable to report at the level of the stock keeping unit ("SKU") number for the tire, which is a required reporting element under §579.26.

The final rule's definition of "minimal specificity" also impacts the format for reporting property damage claims. Throughout this proceeding, NHTSA has informed RMA that it is the agency's intention to require the reporting of property damage claims on an aggregate basis, consistent with RMA's

recommended format. This format, which NHTSA has now adopted, provides for reporting aggregate data by tire size, tire type, plant of manufacture, SKU, tire type code, and year produced. However, NHTSA's definition of "minimal specificity" has the effect of prohibiting aggregate reporting since it excludes the TIN, which is an essential element for reporting aggregate data by SKU, plant of manufacture, tire type code, and year of manufacture. Conversely, the identification of tires to include only manufacturer, tire model, and tire size will actually be inclusive of multiple SKU's, multiple type codes, multiple speed and load ratings, and multiple tire constructions. Tire data reported in this manner will be essentially meaningless information and therefore irrelevant in the context of an early warning system. Without the TIN, in other words, the data could only be completed by tire line and size and would have questionable accuracy and therefore limited benefit to NHTSA.

Furthermore, tire manufacturers even receive property damage claims that are later determined to involve another manufacturer's tire. Especially since the final rules require tire manufacturers to report property damage claims in the aggregate, 579.26 (c), it makes no sense to include within this data claims that may later be determined to be inaccurate. Such tainted data has no place in NHTSA's early warning reporting database for tires. We further note that NHTSA is expressly precluded from collecting and disseminating data that fails to meet the quality, utility, objectivity and integrity standards of the Data Quality Act, P.L. 106-554, the OMB Guidelines implementing the Act, 67 *Fed. Reg.* at 8452-8460, and the pending DOT Data Quality Guidelines that specifically apply to NHTSA.

For all of these reasons, NHTSA should revise the final rule to define the term "minimal specificity" to require the inclusion of the TIN for property damage claims.

B. Property damage claims.

The final rule's definition of the term "claim" contains the following limitation: "The existence of a claim may not be conditioned on the receipt of anything beyond the document (s) stating a claim." 579.4(c); 67 *Fed. Reg.* at 45874. RMA does not object to this definition for purposes of reporting injury and fatality claims. We do, however, have strong concerns about the application of this language to property damage claims.

RMA's proposed reporting format for property damage claims – which NHTSA has adopted, *see* 67 *Fed. Reg*. at 45862, col. 2, - is based on the established business practice in the tire industry to physically inspect tires that are the subject of property damage claims. Indeed, RMA's proposed early warning

reporting format for property damage claims only works if tire manufacturers are permitted to inspect the tires that are the subject of these claims. Without that physical inspection, it is impossible to assign the condition codes prescribed in the final rule. *See* 579.26(c); 67 *Fed. Reg*. at 45881, col. 3. This assertion is also confirmed by a random sampling of property damage claims recently received by six of RMA's tire manufacturer members. Each manufacturer reviewed ten consecutive property damage claims. Of the 60 property damage claims reviewed by the manufacturers, only 13 or about 20% had information concerning the condition of the tire allegedly associated with the claim. RMA believes this percentage is typical of the lack of information of alleged conditions included in the property damage claims received by tire manufacturers. This exercise therefore confirms that unless the final rule is revised to permit tire manufacturers to inspect the tire prior to reporting, the vast majority of property damage claims reported to the agency will contain very limited information about the condition of the tire.

Moreover, the vast majority of property damage claims fail to provide the TIN or other information necessary to properly identify and categorize the tire, including the tire line, tire size and SKU. In many cases, even when the consumer or the consumer's attorney provides the TIN, it is later determined to be inaccurate after the tire is returned to the manufacturer for inspection and validation of the claim. Thus, unless NHTSA permits tire manufacturers to physically inspect the tire associated with a property damage claim, manufacturers will be unable to provide accurate information regarding the identity of the tire. We further note that it will also be impossible to provide the agency with the tire line, tire size, SKU, plant name and production year, as required in the template NHTSA has published on its website for use in reporting this information.[2]

RMA therefore urges NHTSA to revise the final rule to clarify that a tire manufacturer has no obligation to report a property damage claim until after it has inspected the tire allegedly involved in the claim and assigned the appropriate condition code under 579.26(c). In the alternative, if the information provided in the property damage claim includes the TIN but not the condition of the tire, then tire manufacturers could report the claim to NHTSA within the aggregate data included in the quarterly early warning report, but would need to assign an "unknown" condition code to the claim. If NHTSA accepts this

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[2] The templates for reporting tire manufacturer early warning information were published on NHTSA's website on or about August 16, 2002. RMA is still evaluating these templates for purposes of fully understanding the tire industry's compliance obligations under the final early warning reporting rules. RMA therefore expressly reserves the right to file a separate petition for reconsideration limited to issues presented by these documents within 45 days after their publication, consistent with 49 C.F.R. §553.35.

alternative, it should revise the final rule to allow the reporting of condition codes in a new "unknown" category. (*See also* discussion above on "minimal specificity," at pp. 3-4.) RMA's position on this issue is further supported by the Data Quality Act, P.L. 106-554, the OMB Guidelines implementing the Act, 67 *Fed. Reg.* at 8452-8460, and the pending DOT Data Quality Guidelines that specifically apply to NHTSA (cite). These guidelines expressly preclude NHTSA from collecting and disseminating data that fail to meet the standards of quality, utility, objectivity and integrity.

C. Warranty adjustments – "customer satisfaction conditions."

In our comments in response to the ANPRM and NPRM, RMA urged the agency to require tire manufacturers to include the category "customer satisfaction conditions" in the reporting format for warranty adjustments. RMA also provided NHTSA with the following description of this category:

> Tire conditions reported in the category "customer satisfaction conditions" include any tire not meeting customer expectations due to adverse operating conditions, cosmetic conditions, ride conditions, wear conditions, customer abuse, conditions not directly related to the tire (e.g. valve leak, bent rim), and the like. This category covers all warranted and non-warranted (goodwill) adjustment conditions not included in the four component categories: tread (131), sidewall (132), bead (133) and other (134).

As we explained in our comments in response to the ANPRM, this category is designed to collect a host of adjustments that are made by the manufacturer for reasons unrelated to the safety and durability of the tire. They thus have no correlation to safety or the other component categories required under the final rule – tread, sidewall and bead.

Contrary to RMA's recommendations, NHTSA deleted the "customer satisfaction condition" category from the final rule. In explaining this decision, NHTSA stated, "We do not believe that data concerning tires with no failure condition or with cosmetic, ride or wear concerns, will be useful to the early detection of safety–related defects." 67 *Fed. Reg*. at 45853, col. 3. However, NHTSA also "emphasize[s] that tire failure conditions attributed to 'adverse operating conditions' or customer abuse should be counted in the appropriate [component] category set forth in the rule." Id. In other words, the agency wants a portion of the "customer satisfaction" data, but just not as part of a separate "customer satisfaction" category.

We fail to see the logic or advantage of NHTSA's position. This position will only serve to confuse the quality of the final data and distort the information provided in the other categories. Tire manufacturers do not now record customer satisfaction adjustments in the component categories approved in the final rule - bead, sidewall or tread. Including this non-safety data in these component categories will be inaccurate and will not assist the agency in identifying any potential safety trends for a particular tire. Indeed, to do so would be to turn the concept of a "customer satisfaction" adjustment on its head since these adjustments, by definition, do not involve safety-related conditions involving the bead, sidewall or tread of the tire.

RMA also understands, however, the agency's concern that a reporting category that includes "customer satisfaction conditions," as initially defined by RMA, could include data that relates to the "reportable conditions" as we have defined *infra* at p. 12, but are due to improper consumer treatment or maintenance. We have therefore revised this definition as follows:

> Tire conditions reported in the category "customer satisfaction conditions" include any tire exhibiting a "reportable condition" [as defined *infra* at p. 12] but where the condition is due to adverse operating conditions, customer abuse, or service abuse.

Thus, this reporting category would include goodwill adjustments made because of road hazards and improper repairs that result in one of the "reportable conditions" for tires. However, cosmetics, ride, and wear conditions would not be reported. This modified definition of the "customer satisfaction condition" reporting category addresses the concerns NHTSA expressed in the preamble to the final rule and ensures that the tire industry's warranty adjustment data is reported in the appropriate condition category.

We therefore urge NHTSA to reconsider its position on this issue and expressly include the category "customer satisfaction conditions" among the required reporting categories for the tire industry's warranty adjustment data. We also urge NHTSA to adopt RMA's revised definition of this category as part of the final rule.

III PROVISIONS IN THE FINAL RULE THAT SHOULD BE RECONSIDERED AND REVISED.

A. Reporting Requirements.

1. Reporting threshold.

NHTSA proposed in the NPRM to exempt tires that had a total annual production of 15,000 or less from most of the early warning reporting requirements. RMA had recommended that the agency adopt this number as the reporting threshold in order to minimize the risk of submitting skewed data associated with limited production runs. We also noted that the 15,000 figure corresponds to one of the exemptions to the Uniform Tire Quality Grading Standard, 49 C.F.R. §575.104. The final rule, however, requires that a tire be exempt from all of the provisions of §575.104 before it can be exempt from the early warning reporting requirements. But determining whether a tire meets the UTQGS exemption is not a simple matter and could lead to vastly different interpretations by tire manufacturers.

Whether or not NHTSA intended the early warning reporting exemption to be identical to the UTQGS exemption, by doing so the agency has introduced a great deal of complexity into what should be a relatively straightforward issue. RMA also appreciates that tire manufacturers must provide sufficient data about the performance of their products to ensure the effectiveness of the agency's early warning reporting system We have therefore reconsidered our initial position on this issue and recommend that the final rule (with the exception of the reporting requirements for deaths) be revised to exempt all tires with an annual production of 5,000 or less from the early warning reporting requirements in §579.26. We believe this bright-line test will assist the agency and ensure consistency in compliance. The final rule should therefore be amended to delete the reference to UTQGS for purposes of establishing the reporting threshold for tire manufacturers and instead require reporting for tires having an annual production in excess of 5,000.

2. Lists of "common green tires."

In our comments in response to the ANPRM and NPRM, RMA recommended that the final rule require tire manufacturers to report lists of common green tires with their quarterly early warning reports. RMA's proposed regulatory language required that list to "provide tire line, size designations and SKU numbers for all tire groupings considered common greens." Feb. 4 comments at Att. A, p. 3.

The final rule adopted RMA's recommendation to require a tire manufacturer to submit a list of common green tires with each quarterly early warning report. However, the rule requires manufacturers to provide additional information beyond that proposed by RMA. Under 579.26(d), 67 *Fed. Reg.* 45882, col. 1, "the list shall provide all relevant tire lines, tire type codes, SKU numbers, plant where manufactured, brand names, and brand name owners." (Emphasis added.)

RMA urges NHTSA to delete the requirement to provide plant of manufacture, brand names and brand name owners with each list of common green tires on the quarterly reports. To do so would impose additional collection and processing burdens on tire manufacturers that would not enhance the value of this information. As we have already explained, common green tires are those tires that are produced according to the same internal specifications but may have different external characteristics and may be sold under different tire line names. Thus, the purpose of providing the common green list with the quarterly report is so that the tires identified on the report could be grouped according to common internal manufacturing specifications. Providing tire lines, tire type codes and SKU numbers (which can only be determined from the TIN) are sufficient for this purpose. The agency, can of course, always seek additional information from the manufacturer in the course of an investigation.

3. Non-physical injuries.

The final early warning reporting rules require tire manufacturers to provide the agency with information on claims and notices of all injuries occurring in the United States that are alleged or proven to be due to a tire defect. 579.26(b)(1); 67 *Fed. Reg*. at 45881, col. 3. RMA does not object to the requirement in this regulation to report all alleged or proven injuries to NHTSA as part of each tire manufacturer's quarterly early warning report. However, in the preamble to the final rule, NHTSA states that the term "injury" – even though not expressly defined in the regulations – will include non-physical as well as physical injuries. According to the agency, "the comments have not demonstrated that non-physical injuries would necessarily not be indicative of a defect trend. " 67 Fed. Reg. at 45840, col. 3.

RMA urges NHTSA to expressly exclude non-physical injuries from the quarterly early warning reports submitted by tire manufacturers. NHTSA is correct that currently, "In many cases, claims for injury are not very specific as to the type of injury alleged." 67 *Fed. Reg*. at 45840, col. 2. Thus, as NHTSA recognizes, there is a high probability that NHTSA will receive some claims information that may involve only non-physical injuries even if the rule is limited to physical injury claims.

However, we are concerned that a government mandate requiring tire manufacturers to report non-physical injuries could lead to the filing of frivolous or baseless claims that may be part of a campaign designed solely to damage the reputation of a tire manufacturer. Such information will be meaningless in the context of an early warning system designed to identify potential defects and

other safety problems and divert the agency's time and attention from more relevant data.

In short, in order to prevent NHTSA's early warning system from being susceptible to manipulation by outside entities that may have a different agenda from the agency's, NHTSA should not require the reporting of claims solely alleging non-physical injuries and expressly so provide in the final rules.

4. Imported tires on OE vehicles and imported replacement tires.

In reviewing the final rules and the accompanying text, we can find no reference to the unique concerns presented by the early warning reporting requirements for tires that are imported as original equipment ("OE") on motor vehicles or for imported replacement tires. In our comments in response to the NPRM, RMA urged NHTSA to provide provisions in the final rule that modified the reporting obligations for tires that may be imported into the U.S., whether or not they are manufactured here. We pointed out that such tires may not be sold only in the U.S. but also in other countries. For this reason, U.S. manufacturers that also import tires may only have limited information relating to the numbers of tires that are actually imported and may not have access to worldwide production data, plant of manufacture, or the other information required under §579.26(a).

With respect to replacement tires, we therefore recommend that the final rule be modified to permit tire manufacturers to report only the quantity of tires imported during the quarterly reporting period for purposes of complying with §579.26(a). For tires that are imported as original equipment on motor vehicles, tire manufacturers do not even have access to this limited importation information, since it is proprietary to the vehicle manufacturer. For such tires, tire manufacturers can only report fatalities and injuries for which they receive notification. We therefore recommend that the final rule be revised to require tire manufacturers to report only injuries and fatalities associated with imported tires on OE vehicles.

5. Motorcycle tires.

RMA does not object to NHTSA's decision to require tire manufacturers to include motorcycle tires within the quarterly early warning reports submitted under 579.26(a) and (c). *See* 67 *Fed. Reg*. 45862, col. 3. NHTSA apparently assumes, however, that the tire industry can report the same information for motorcycle tires that we have proposed to report for passenger and light trucks. This is true with one exception. Because of the way motorcycle tires are sold and distributed, it is not possible for tire manufacturers to identify the original

equipment (vehicle) manufacturer ("OEM"), nor to easily obtain this information. We therefore urge the agency to delete the OEM column from the early warning reporting format for motorcycle tires.

6. Quarterly v. Cumulative Reporting.

The final rule requires the reporting of early warning data "for each reporting period." §579.26; 67 *Fed. Reg*. at 45881, col. 1. RMA's proposed reporting format, however, would require the reporting of cumulative (i.e., to date) production information, warranty adjustments, and property damage claims, rather than adjustments and claims received in the quarter. Since NHTSA has accepted RMA's reporting format, see 67 *Fed. Reg.* at 45862, col. 2, §579.26 should be revised to require the reporting of cumulative early warning data received by the manufacturer, by year of manufacture, through the end of each reporting period.

B. Definitions.

1. Definition of "affiliate."

The definition of "manufacturer" in the final rule, "includes any parent corporation, any subsidiary or affiliate, and any subsidiary or affiliate of a parent corporation of such person." 579.4(c); 67 *Fed. Reg.* at 45875, col. 2. The term affiliate is defined to mean, "in the context of an affiliate of or person affiliated with a specified person, a person that directly, or indirectly through one or more intermediates, controls or is controlled by, or is under common control with, the person specified." 579.4(c); 67 *Fed. Reg.* at 45874, col. 1.

NHTSA has apparently relied on regulations of the Securities and Exchange Commission ("SEC") in defining the term "affiliate" for purposes of this rule. *See* 17 C.F.R. §230.405 (April 1, 2002). SEC regulations, however, also provide a separate definition of a critical term used in the definition of affiliate – the definition of "control":

> The term control (including the terms *controlling*, *controlled by*, and *under common control with*) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

17 C.F.R. §230.405.

RMA urges NHTSA to include the SEC's definition of "control" in the final reporting regulations in order to ensure that the term "affiliate" is defined with specificity.

2. Definition of "tire."

The final rule includes within the definition of "tire" the following: "This term also includes the tire inflation valves, tubes, and tire pressure monitoring regulating systems, as well as all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.)" 579.4(c); 67 *Fed. Reg.* 45876, col. 3.

RMA objects to including non-tire components within the final rule's definition of tire – especially since the NPRM contained no proposed definition of tire and the tire industry had no opportunity to comment on this issue. We urge the language cited above to be stricken from the final rule.

3. Definitions of reportable conditions associated with "crown", "sidewall", and "bead."

In the final rule, NHTSA has included definitions for "tread (or crown)", "sidewall," and "bead," *see* §579.4(c), but has failed to specify what conditions must be associated with these tire components to require their inclusion on the quarterly reporting format for property damage claims and warranty adjustments. When RMA submitted our proposed reporting format with our initial comments (filed March 23, 2001), we provided the following definitions for these categories of reportable conditions:

> *Crown (or Tread) Conditions*: Conditions reported in this category include any separation of any one component from another or a separation within a component.
>
> *Sidewall Conditions*: Conditions reported in this category include any separation of any one component from another or a separation within a component, and any breaks or tears of any component.
>
> *Bead Conditions*: Conditions reported in this category include any separation of any one component from another or a separation within a component, and any break or tear of these components.

It is critical that NHTSA include these definitions in the final rule. Merely defining the part of the tire without specifically enunciating the types of conditions that might be reported therein is incomplete and will lead to inconsistencies in the reporting of this information.

C. Issues Requiring Correction or Clarification from NHTSA.

1. One-time reporting of historical information.

NHTSA has determined not to require tire manufacturers to submit "field reports" as part of their early warning reporting obligations. *See* 67 *Fed. Reg*. 45856, cols. 2-3. There is, however, a reference to "field reports," in 579.28(c), which requires all covered manufacturers to submit one-time historical information to the agency by September 30, 2003. We urge NHTSA to clarify that tire manufacturers are not required to submit field reports as part of the one-time historical reporting requirement.

2. Formats for Electronic Reporting of Data.

As we stated in our comments in response to the NPRM, RMA supports the concept of reporting early warning data electronically to the agency. There are, however, a host of information technology ("IT") issues presented by the transmission of the early warning data required under the final rule. Indeed, the sheer volume of this data presents challenges to the full-time IT professionals who work for the tire manufacturers covered by the rule.

Even though NHTSA has apparently endorsed two alternative forms of electronic data submission, the agency has also announced that it will "conduct a public meeting in Washington to discuss data transmission methods and protocols." 67 *Fed. Reg*. at 45864-65. Because the various issues related to data transmission may not be resolved until after the August 26, 2002, deadline for filing a petition for reconsideration, RMA expressly reserves the right to seek reconsideration of the final formatting rules within 45 days after they become final.

3. Scope of "Production Information."

Under 579.26(a), tire manufacturers are required to report "production information," for each quarterly reporting period. Included within this category of information is "the production year, the cumulative warranty production, and the cumulative total production through the end of the reporting period." The rule fails to specify, however, whether tire manufacturers must report data for tires produced for sale only in the U.S., or for tires produced for sale worldwide. Since Congress intended the early warning reporting system to protect U.S. consumers and enhance NHTSA's mission to improve motor vehicle safety in this country, NHTSA should only require production information for tires produced for sale in the U.S. Moreover, it would be extremely burdensome for tire manufacturers to report worldwide production data each quarter. The final

rule should therefore be amended to clarify that tire manufacturers under 579.26(a) need only report "cumulative warranty U.S. production" and "cumulative total U.S. production" for each reporting period.

4. Disclosure of Early Warning Data.

In explaining its Final Rule, NHTSA states that "[t]his notice does not establish rules governing disclosure or confidentiality of information submitted pursuant to the early warning rule." 67 Fed. Reg. 45866 n. 6. Continuing, NHTSA explained: "The agency has published proposed amendments to 49 CFR Part 512, *Confidential Business Information* [67 FR 21198, April 30, 2002] and, as appropriate, in the course of that rulemaking will consider issues related to confidentiality and disclosure." *Id.*

However, notwithstanding its statement of intention *not* to address confidentiality and disclosure issues in the early warning rulemaking, NHTSA did just that in promulgating a regulation pertaining to various residual matters. Under section 579.28 (Due date of reports and other miscellaneous provisions), subsection (j) (*Claims of confidentiality*), provides: "If a manufacturer claims that any of the information, data, or documents that it submits is entitled to confidential treatment, it must make such claim in accordance with part 512 of this chapter." 67 Fed. Reg. at 45883. NHTSA also acted inconsistently with its statement of intention not to address confidentiality issues when it discussed Utilimaster's concerns over the submission of field reports at 67 Fed. Reg. 45856.[3]

Of course, as noted by NHTSA, part 512 is now the subject of a separate rulemaking addressing all confidential business information ("CBI") submitted to the agency (and, in fact, the question of whether manufacturers must submit specific claims of confidentiality for early warning information has been

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[3] Specifically, NHTSA stated:

> Comments raised concerns about commercially sensitive and proprietary information. Utilimaster complained that competitors might use the information submitted to NHTSA against one another to gain a competitive edge. However, manufacturers can request confidentiality for information submitted to NHTSA pursuant to our regulation entitled *Confidential Business Information*, 49 CFR Part 512. Competitive harm is a basis for granting a request for confidentiality. 67 Fed. Reg. 45856.

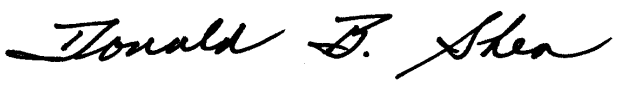
addressed at length, and by many commentators, in that rulemaking). Docket No. NHTSA-02-12150; 67 Fed. Reg. 21198 (April 30, 2002). For the reasons presented in our comments in the CBI rulemaking, which we hereby incorporate by reference, we believe the TREAD Act expressly prohibits the disclosure of early warning data – whether or not the data is deemed to be "confidential" – except in certain limited circumstances provided in the Act. Thus, at the very least, given the pendency of the issue in the CBI rulemaking and the stated intention of NHTSA not to address it in the final early warning rule, both section 579.28(j) and the paragraph referencing 49 CFR Part 512 at 67 Fed. Reg. 45856 should be stricken.

If, however, NHTSA chooses to combine the final results of its CBI rulemaking with its reconsideration of the final early warning rule, then NHTSA should amend the final early warning rule to provide that early warning data shall not, as a general rule, be disclosed to entities outside the agency. In addition, the final rule should provide that claims for confidentiality of early warning data expressly excluded from the non-disclosure provision of the TREAD Act will be addressed under 49 C.F.R. Part 512.

IV. CONCLUSION

For all the reasons discussed above, NHTSA should accept the revisions to the final early warning reporting regulations recommended in this petition. RMA also reserves the right to file a separate petition for reconsideration with respect to any issues left unresolved in the final rule, including issues relating to the formatting, transmission, and disclosure of early warning data submitted by the tire industry.

Respectfully submitted,



RUBBER MANUFACTURERS ASSOCIATION
Donald B. Shea
President & CEO
1400 K Street, N.W., Suite 900
Washington, D.C. 20005
(202) 682-4800

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